

4 February 1981

MEMORANDUM FOR: Chief, Contract Personnel Division

25X1 FROM : [REDACTED]
Deputy Director of Personnel Policy, Planning,
and Management for Special Programs

SUBJECT : Hiring Freeze

1. Mr. Fitzwater indicated today that he does not want to issue freeze instructions on independent contractors and MOC's at this time. He prefers to consider each case on its merits. After discussions with the Director and Mr. Bross, Mr. Fitzwater is prepared to approve cases where strong operational needs are established and delay is impossible.

25X1 2. I advised [REDACTED] of our plans. All DDO requests requiring immediate attention are to be routed through CMS and they will return those that are not essential or that can be deferred. Urgent requirements will be forwarded to you with CMS endorsement. You should assure that necessary information is provided and make a recommendation to Mr. Fitzwater.

25X1

Distribution:

Original - Addressee

2 - DD/PPP&M/SP
25X1 DD/PPP&M/SP [REDACTED] (4 Feb 81)

Coverage and Exemptions

1. Q: Are temporary and part-time hires forbidden?

A: Yes. Under this freeze, agencies may make no accessions, including temporary and part-time hires, except as provided in the government-wide exemptions listed in OMB bulletin 81-6 or in a single agency exception approved by OMB.

2. Q: Can agencies reemploy annuitants who recently retired from the agency?

A: Not unless the agency made a written commitment before November 5, 1980, to do so.

3. Q: Is employment under public policy employment programs restricted by this limitation?

A: Yes, insofar as the positions encumbered by the public policy employment program participants are subject to ceiling constraints.

4. Q: Are interagency transfers allowed?

A: No, they are precluded since they constitute accessions to the gaining agency.

5. Q: Reassignments within an agency are exempted from the limitation. What about promotions and details?

A: The limitation covers new hires which constitute accessions to the agency. Personnel actions that do not constitute accessions, including reassignments, promotions and conversions to new appointments, are not covered by this limitation. Similarly, details, even between agencies, are not subject to the limitation.

6. Q: May agencies appoint experts and consultants during the freeze?

A: Only to facilitate transition to the new Administration as provided in paragraph 6,k of OMB Bulletin 81-6. For example, such appointments may be made to bring senior officials of the new Administration into the agency pending permanent appointment.

7. Q: Are agencies allowed to re-hire employees who exercise reemployment rights or return to duty after leave without pay during the freeze?

A: Since agencies are obligated to rehire them, such returning employees are treated as commitments. Similarly, former Presidential appointees who have statutory right of return to the SES may exercise this right during the freeze.

8. Q: May agencies honor commitments made after November 5, 1980 and before January 20, 1981?

A: No. Of course, if the commitment was made after November 5 and the employee has already entered on duty, that new hire is allowed to stand. Commitments made after November 5, 1980, to employees who have not entered on duty must be cancelled.

9. Q: How will this freeze affect the ten agencies which are assigned work year ceilings (on a full-time equivalency basis) by OMB?

A: The affect on them will be the same as on all other agencies.

10. Q: May agencies convert temporary and/or part-time appointments to full-time permanent during the freeze?

A: Yes. Such actions do not constitute accessions to the agency. of course, such actions must be made within existing ceiling controls.

11. Q: May agencies extend temporary appointments during the freeze?

A: Yes, provided the extension is otherwise proper.

12. Q: Will summer employment be limited by the freeze?

A: Agencies that have historically hired summer employees may continue to do so as provided in the exemption for seasonal hiring. Advance notification of OMB is required. (Paragraph 6,j of OMB Bulletin 81-6)

13. Q: What kinds of appointments are covered by the exemption for noncareer positions necessary to facilitate transition to the new Administration (paragraph 6,k)?

A: These special appointments include:

(a) Special limited term SES appointments approved by OPM for transition (see question #21)

(b) ITC and NTC temporary Schedule C appointments (see question #25)

(c) Consultant appointments made to bring senior officials into the agency pending permanent appointment (see question #6)

14. Q: Are the exemptions, which we granted under the previous freeze, for employees who are displaced from the Council on Wage and Price Stability and the Department of Justice Law Enforcement Assistance Administration still in effect?

A: No. They are cancelled.

15. Q: Are the exemptions for specific agencies, which were granted under the previous freeze, still in effect?

A: No. They are cancelled. Of course, agencies may resubmit requests for exemptions.

Commitment Letters

16. Q: If a commitment were made in writing by an agency personnel officer to an individual prior to November 5, 1980, and he/she had been certified but internal agency determinations (investigation, citizenship, education) are pending, would the hiring restriction apply?

A: No.

17. Q: To qualify as exemptions from the limitations, employment commitments must have been made in writing on or before November 5 by agency personnel officers. Can commitments made by selecting officials qualify for the exemption?

A: Only if the selecting official has been delegated appointing authority for the job to be filled and all requirements for appointment have been met, including certification from a competitive examination, if appropriate.

18. Q: What are the legal implications of withdrawing a written job commitment?

A: Government employment is not contractual. Rather, it is governed by statute. Courts, in interpreting title 5, consistently have held that a person is not a government employee until he or she is appointed to a position in the civil service. An individual does not have an appointment until the last act necessary to create that appointment is completed. In most cases, this act is the completion of a Form 50 and entry on duty. Thus, a mere written commitment does not create a legal right to government employment. Some isolated court cases, however, in particularly egregious circumstances have held that a written offer plus detrimental reliance on that offer bound the government. Agencies should inform OPM of any cases in litigation where there are extreme circumstances.

19. Q: What remedy is available for a person who quits a job or incurs some other financial obligation (such as selling a house) on the basis of a written job commitment that is withdrawn?

A: As a general rule, the government is immune to a suit for damages and would not be liable for this type of harm. In most cases, if the government were to lose, it would have to take the person on as an employee and the person would not have a right to any compensation for moving expenses beyond that normally provided. If the circumstances are particularly egregious, however, agencies may wish to apply to OMB for an exemption to avoid the costs and risks of litigation. OMB will issue guidance on requesting exemptions for serious financial hardship cases.

SES

20. Q: May career as well as noncareer SES appointments be made during this freeze?

A: No.

21. Q: Can SES Limited Term and Limited Emergency appointments still be made?

A: Such appointments require OPM approval. Limited term appointments will be approved only for positions with duties that relate to transition to the new Administration. Limited emergency appointments will be approved only if the agency head determines that an emergency situation exists as provided in section 6,a of OMB Bulletin 81-6.

22. Q: Are conversions from noncareer to career SES appointments and conversions from competitive service to SES appointments precluded by this freeze?

A: No.

23. Q: Are jobs for which salaries are administratively determined (AD) exempt?

A: Not across the board. Agencies with such positions must request exemption from OMB on a case-by-case basis.

Schedule C

24. Q: Are noncareer executive assignments (NEA's) exempt from the freeze?

A: Yes, the exemption for noncareer SES (paragraph 6,f) is interpreted to include NEA's.

25. Q: What is the limitation on hiring Schedule C employees in agencies that have delegated authority to establish Schedule C positions?

A: Agencies with such delegated authority may fill Schedule C jobs up to the allocation contained in the delegation agreement between OPM and the agency. Agencies that do not have such delegated authority may fill Schedule C positions only up to the number of Schedule C positions existing in the agency as of November 5, 1980.

26. Q: Can agencies make temporary Schedule C appointments during the freeze?

A: Agencies may make temporary Schedule C appointments only for purposes of facilitating transition to the new Administration to positions that are either:

- identical to an existing Schedule C (ITC) position if intent to vacate that position has been put in writing, or
- new temporary Schedule C (NTC) positions, when it is determined that the agency's need cannot be met through establishment of an ITC position. The number of NTC positions may not exceed 25% of either (1) their total number of Schedule C positions as of March 31, 1980, or (2) their Schedule C quota contained in an agreement with OPM delegating the authority to establish Schedule C positions, if the agency has such a delegation.

Other Employment Programs

27. Q: Some of the clerk-typists recruited and trained under the Inter-agency Hispanic Placement Program were scheduled to enter on duty in late January. May agencies honor these employment commitments under the freeze?

A: Yes. The contracts for this program, negotiated a year ago, contain arrangements to employ a specified number of program participants. In this unusual situation, we consider such arrangements to be employment commitments.

28. Q: Are IPA mobility assignments affected by the freeze?

A: Most mobility assignments are effected by detail, which would not be affected by the freeze. No mobility assignments can be effected as temporary appointments during the freeze.

29. Q: Does OPM plan to continue the Presidential Management Intern Program (PMIP)?

A: Examining for PMIP, including interviews, will continue as scheduled in the near future. Most PMIP's enter on duty in May or June. They will not be able to do so, of course, if the freeze is still in effect.

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM:

DD/PPPM/SP
5E-56 Hdqrs.

EXTENSION

NO.

DATE

3 February 1981

TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. EA/PPPM

3 FEB 1981

2. DD/PPPM

3 FEB 1981

3. D/PPPM

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15.

[redacted] has request for [redacted] to hire an American citizen as a [redacted] under MOC. Several other requests pending and he needs an answer soon. Our alternatives appear to be:

- Answer each request with a temporary hold pending further clarification of freeze;
- Advise all posts of temporary hold;
- Advise all posts to stop MOC's until further notice;
- Do not respond for several days (if resolution appears imminent).

I recommend that we now go to Option b.